

1995

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

PUBLIC SERVICE LEGISLATION AMENDMENT BILL 1995

EXPLANATORY MEMORANDUM

(Circulated by authority of the Prime Minister, the Hon P J Keating, MP)



## **PUBLIC SERVICE LEGISLATION AMENDMENT BILL 1995**

### **OUTLINE**

This Bill proposes a number of amendments to the *Merit Protection (Australian Government Employees) Act 1984* and the *Public Service Act 1922* to implement the decision announced in the 1995-96 Budget to amalgamate the Public Service Commissioner's staff and those required for the purposes of the Merit Protection Act.

The staff of the Public Service Commission and the Merit Protection and Review Agency will form an amalgamated body to be known as the Public Service and Merit Protection Commission.

The Director of the Agency will be known as the Merit Protection Commissioner. The Merit Protection Commissioner will continue to exercise her powers under the Merit Protection Act independent of the Public Service Commissioner, although she will no longer have the powers of a Secretary in relation to the staff employed for the purposes of the Merit Protection Act. Those powers will rest with the Public Service Commissioner who is expected, in turn, to delegate them to the Merit Protection Commissioner.

Other amendments to the Merit Protection Act relate to the appointment of members of the Agency. The Merit Protection Commissioner alone would be capable of being appointed on a full-time basis. Minor changes would also be made to the consultative arrangements relating to the appointment of members of the Agency. Members of the Agency, including the Director, would retain their offices after the amendments commence.

### **FINANCIAL IMPACT STATEMENT**

The amalgamation of the Merit Protection and Review Agency and the Public Service Commission will reduce outlays by approximately \$0.2m in 1996-97 and subsequent years.

## NOTES ON CLAUSES

### PRELIMINARY

#### Clause 1: Short title

The Act will be called the *Public Service Legislation Amendment Act 1995*.

#### Clause 2: Commencement

Clause 2 provides for the Act to commence on the day on which it receives Royal Assent.

#### Clause 3: Schedule

Clause 3 provides for the Acts referred to in the Schedule to the Bill to be amended in the manner set out in that Schedule.

### SCHEDULE

#### AMENDMENTS OF THE MERIT PROTECTION (AUSTRALIAN GOVERNMENT EMPLOYEES) ACT 1984

Items 1 to 17, 19, 21, 26, 29, 30, 34, 35, 36, 38, 40 and 41 of the Schedule will make minor amendments to the Act to change the title of the Director of the Agency to that of the Merit Protection Commissioner. To avoid confusion, these amendments would also make it clear that references in the Act to the "Commissioner" are to be read as references to the Public Service Commissioner. Item 2 would also omit the definitions of "full-time member" and "part-time member", consequential upon the amendment to be made by Item 18.

Item 18 of the Schedule will omit subsections 63(3), (4), (5) and (6) of the Act and replace them with new subsection 63(3), (4) and (5). Subsections 63(3) to (6) of the Act deal with the appointment of the Director and other members of the Agency. They require that one of the members of the Agency be appointed after consultations between the Minister and the ACTU and provide that the Director of the Agency shall be appointed on a full-time basis and the other members on either a full-time or part-time basis, provided that no more than two members hold office on a full-time basis at any one time.

Item 18 would replace these provisions with new consultative arrangements and provide that only the Merit Protection Commissioner can be appointed on a full-time basis.

New subsection 63(3) would require the Minister (or his or her representative) to consult the Public Service Commissioner and the ACTU before the

appointment of the Merit Protection Commissioner, while new subsection 63(4) would require the Minister to consult the Public Service Commissioner, the ACTU and the Merit Protection Commissioner prior to the appointment of any other member of the Agency.

In practice, no member of the Agency, other than the Director, has ever been appointed on a full-time basis. New subsection 63(5) would provide that the Merit Protection Commissioner alone may be appointed on a full-time basis, with the other members being appointed on a part-time basis.

As is currently the case, all Agency members, including the Merit Protection Commissioner, would continue to be appointed by the Governor-General.

Items 20, 22 to 25, 27, 28 and 31 and 32 of the Schedule would amend various provisions of the Act consequential upon the amendment to be made by Item 18.

Item 33 of the Schedule would omit section 77 of the Act. Section 77 of the Act provides that the staff required for the purposes of the Act are to be appointed or employed under the *Public Service Act 1922*. Subsection 77(2) provides that the Director of the Agency has all the powers of a Secretary in relation to the staff of the Agency as if the Agency were a separate Department of the Public Service Act. Subsection 77(3) deems the Director to be a Secretary for the purposes of section 26 of the Public Service Act. (Section 26 of the Public Service Act allows a Secretary to delegate his or her powers under that Act.)

As a result of the amalgamation of the Merit Protection and Review Agency and the Public Service Commission, the staff required for the purposes of the Agency would be employed in the new Public Service and Merit Protection Commission. The Public Service Commissioner will have the powers of a Secretary in relation to the staff of the new Commission, although it is expected that Merit Protection Commissioner will be authorised to exercise personnel and financial management powers in relation to the officers required for the purposes of the Merit Protection Act. The exercise of those powers by the Merit Protection Commissioner will ensure the continued independence of the Agency in the performance of its functions, while at the same time achieving savings in the administration of the Agency. Section 18B of the Public Service Act would also be amended by this Bill (see Notes on Item 44) to effect these changes.

Item 37 of the Schedule would omit paragraph 82(2)(b) of the Act and insert a new paragraph in its place. Section 82 of the Act protects people who make statements or provide information to the Agency or an "officer" for the purposes of the Act from civil actions. Paragraph 82(2)(b) defines "officer" to include a person who is a member of the staff referred to in section 77 of the Act. As explained in the Notes on Item 33, however, section 77 of the Act would be omitted and the staff of the Agency would be referred to in section 18B of the *Public Service Act 1922*. Consequential upon that amendment,

Item 37 would ensure that the reference in paragraph 82(2)(b) of the Act to persons employed for the purposes of the Act defines them to mean the persons referred to in section 18B of the Public Service Act who are appointed or employed for the purposes of the Merit Protection (Australian Government Employees) Act.

Item 39 of the Schedule would make a similar amendment to section 84 of the Act, which requires staff of the Agency not to divulge information acquired in the course of their employment.

Items 42 and 43 of the Schedule are transitional provisions. Item 42 would preserve the existing appointment of the Director of the Agency after the commencement of these amendments. It would also preserve the effect of any actions taken by the Director of the Agency prior to the commencement of the amendments. Item 43 would provide that the staff of the Agency referred to in section 77 of the Act will be taken to be employed under the same terms and conditions under section 18B of the Public Service Act after the amendments commence.

## **AMENDMENT OF THE PUBLIC SERVICE ACT 1922**

Item 42 of the Act would amend subsection 18B(1) of the Act. Section 18B provides that the Public Service Commissioner has the powers of a Secretary in relation to the staff required to assist the Commissioner in the performance of his or her functions or the exercise of his or powers under the Act. Item 42 would amend subsection 18B(1) to make it clear that Commissioner also has the powers of a Secretary in relation to the staff required for the purposes of the *Merit Protection (Australian Government Employees) Act 1984*.

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